

TOLLING AGREEMENT
BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY AND
CARTER OFF-ROAD PARK
FOR CLAIMS UNDER THE CLEAN WATER ACT

The U.S. Environmental Protection Agency ("EPA") contends it has a potential cause of action pursuant to Section 301 of the Clean Water Act ("CWA") against the Carter Off-Road Park for violations arising from construction and development activities at a property owned and operated in Pulaski County, Arkansas ("Tolled Claims:").

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EPA and Carter Off-road Park enter into this Tolling Agreement to facilitate settlement negotiations between the parties within the time period provided by this Agreement. Without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on _____, 20-- , and ending on _____, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA on the Tolled Claims.
2. Any defense of laches, estoppel, waiver, or other similar equitable defense based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.
3. Carter Off-Road Park shall not assert, plead, or raise against EPA in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
4. This Tolling Agreement does not constitute any acknowledgment of any fact, conclusion of law or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of EPA that any statute of Limitations or similar defense concerning the timeliness of commencing an action is applicable to the Tolled Claims. EPA reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing an action is applicable.
5. This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.
6. It is understood that EPA may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to Carter Off-Road Park. Where EPA elects to terminate negotiation under this Paragraph, the Tolling Period shall continue until the date of such termination plus (3) thirty days. Nothing here in shall preclude the commencement of any action by EPA to protect the public health, welfare or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claim that could be brought by EPA in an action against Carter Off-Road Park or the date on which EPA may file such a complaint, except as expressly stated herein.
8. This Tolling Agreement is not intended to affect any claims by or against third parties.
9. This Tolling Agreement is effective upon execution by Carter Off-Road Park without the requirement of filing in any Court or with the Regional Hearing Clerk, and may be signed in counterparts. ????
10. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.
11. The undersigned representatives of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions 9of this document. This Tolling Agreement shall be binding upon EPA and upon Carter Off-Road Park and their successors.

FOR CARTER OFF-ROAD PARK

Date: _____

FOR EPA:

Date: _____

**Assistant Regional Counsel
U.S. EPA – Region 6**